sTHE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.28231 of 2005

Date:24.01.2006

Ayesha Fathima

----------Petitioner

The A.P.State Minorities Finance Corporation and another.

----------Respondents

ORDER:

The petitioner is the wife of the 2nd respondent, who, in turn, is employed with the 1st respondent-Corporation. The petitioner states that the 2nd respondent has been harassing her, and vexed with that, she submitted a complaint before P.S.Pahadishareef, Ranga Reddy, which was registered as Crime No.174 of 2005 under Section 498-A I.P.C. The grievance of the petitioner is that the 1st respondent did not take suitable action against the 2nd respondent in terms of Rule 20 of the Service Rules (for short 'the Rules') applicable to the 1st respondent. She claims to have made a representation, dated 26.12.2005, to the 1st respondent, and alleges that no action has been taken thereon.

Heard the learned counsel for the petitioner, the learned Standing Counsel for the 1st respondent and the learned counsel for the 2nd respondent.

The grievance of the petitioner is that the 1st respondent did not take any steps against the 2nd respondent, though Crime No.174 of 2005 is pending against him. Reliance is placed upon Rule 20 of the Rules. The relevant portion thereof reads as under:

"RULE 20 SUSPENSION

1. *The appointing authority or any authority to which it is*

subordinate or the disciplinary authority or any other authority empowered in that behalf by the Management by general or special order may place an employee under suspension.

a. *Where a disciplinary proceedings against him contemplated or is pending or.*

b. *Where a case against him in respect of any criminal offence is under investigation or trial.*

c. *Not necessary.*

d. *Not necessary.*

2. *An employee who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding 48 hours shall be deemed to have been suspended with effect from the date of detention, by an order of the appointing authority, and shall remain under suspension until further orders."*

From a perusal of the same, it is evident that while the 1st respondent has the discretion, in the matter of placing an employee under suspension, in the instances covered by Clauses (a) and (b) of Rule 20(1) of the Rules. It has no option, except to suspend an employee, if the case is governed by Sub-Rule (2) of Rule 20 of the Rules. In the instant case, the 2nd respondent obtained anticipatory bail, and he was not under detention for 48 hours. Therefore, the case is not governed by Sub-Rule (2) of Rule 20 of the Rules.

The learned counsel for the petitioner contends that even where a Criminal Case is pending against an employee, suspension is a matter of course. It is difficult to accept such a wide proposition. Pendency of disciplinary proceedings against an employee is a circumstance, under which he can be suspended. Pendency of a Criminal case would also provide such an opportunity. However, much would depend upon the gravity of the situation. It is only where the enquiry into grave charges or acts of misconduct is pending, or where the Criminal Case involving a serious offence is pending, that the employer may choose to exercise the discretion of suspending an employee.

Here again, the employer is under obligation to verify as to whether the pendency of such case would come in the way of effective discharge of duties by the employee. Mere pendency of Criminal Proceedings or for that matter, disciplinary proceedings, cannot by itself constitute a ground to place an employee under suspension. The matter needs to be examined from this perspective.

For the foregoing reasons, the Writ Petition is disposed of, directing that the 1st respondent shall examine the representation, dated 26.12.2005, submitted by the petitioner, form an opinion as to whether the circumstances warrant the suspension of the 2nd respondent, within a period of one month from the date of this order, and communicate the same to the petitioner. There shall be no order as to costs.

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24.01.2006

Note: L.R.Copy to be marked.

(B/o)

Jsu